

DERIVATIVES

See also “CFTC Extends Public Comment Period for Proposed Rules Pertaining to Cross-Border Clearing” and “CFTC and European Commission Issue Joint Statement Following Meeting on Cross-Border Derivatives Regulatory Issues” in the CFTC section.

SEC Issues Security-Based Swap Recordkeeping and Reporting Rules

On September 19, the Securities and Exchange Commission adopted a package of new final rules and rule amendments dealing with recordkeeping and reporting requirements for security-based swap dealers (SBS dealers). In general, the SEC is requiring SBS dealers to create and maintain records with respect to security based-swaps in a manner consistent with current recordkeeping and record retention rules that apply to broker-dealers. The SEC is, however, providing alternate compliance mechanisms that will allow an SBS dealer that also is a swap dealer but is not a broker-dealer to comply with Commodity Futures Trading Commission (CFTC) rules instead and will allow a non-US SBS dealer to request permission to comply with its home country rules.

The new rules go into effect 60 days after they are published in the Federal Register, but the related compliance date will be 18 months after the effective date of future final SEC rules addressing the cross-border application of security-based swap requirements, which is the last of the SBS rules the SEC needs to adopt to complete their Dodd–Frank Wall Street Reform and Consumer Protection Act swap rulemaking obligations.

The text of the new rules are available [here](#).

An SEC Press Release and Fact Sheet concerning the new rules are available [here](#).

FDIC Proposes Amendments to Prudential Regulator Swap Margin Rules

On September 17, the directors of the Federal Deposit Insurance Corporation (FDIC) approved a joint notice of proposed rulemaking (NPR) with respect to the prudential regulator margin rules for non-cleared swaps. The joint form of the NPR indicates that the other prudential swap regulators (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Farm Credit Administration and the Federal Housing Finance Agency) will all be approving the same NPR in the near future.

The proposed rulemaking will make the following amendments to the prudential regulator swap margin rules:

1. Add the additional phase-in year for initial margin (IM) that was recommended in July by The Basel Committee on Banking Supervision and the International Organization of Securities Commissions, so the initial margin phase-in threshold for 2020 will be \$50 billion.
2. Repeal the requirement that a swap dealer must collect initial margin from its affiliates.
3. Permit swap dealers to postpone documentation with a financial counterparty until such time as initial margin or variation margin is actually required to be collected or posted.

4. Allow parties to amend swaps executed before the compliance date of the margin rules without having the amended swap become subject to the margin rules if the reason for the amendment relates to (a) benchmark replacement; (b) portfolio compression; or (c) the reduction of the notional amount due to a novation.

A 30-day comment period will be open following publication in the *Federal Register*.

This approval strongly suggests that the CFTC and the SEC will be making similar changes to their respective swap margin rules.

The text of the NPR is available [here](#).

An FDIC Fact Sheet concerning the NPR is available [here](#).

FDIC Director Gruenberg dissented from the approval, which is available [here](#).

CFTC Market Risk Advisory Committee Approves Plain English IBOR Risk Disclosures

On September 9, the Market Risk Advisory Committee of the Commodity Futures Trading Commission (CFTC) approved some “plain” English disclosures concerning the risks of executing new derivative transactions involving interbank offered rates (IBORs) that will be replaced by new benchmark rates in the relatively near future. The disclosures, which are not mandatory, are intended as “helpful examples” of the information that market participants should share, as appropriate, with all clients and counterparties with whom they continue to transact derivatives referencing London Interbank Offered Rate (LIBOR) and other IBORs. They are drafted for use on a transaction-by-transaction basis, but alternatively can be delivered as part of general risk disclosures. The disclosures will be submitted to the CFTC for consideration.

The text of the approved disclosures is available [here](#).

The International Swaps and Derivatives Association (ISDA) has created a webpage that includes basic information about all the IBORS as a supplement to the disclosures, available [here](#).

CFTC

CFTC Extends Public Comment Period for Proposed Rules Pertaining to Cross-Border Clearing

On September 13, the Commodity Futures Trading Commission (CFTC) announced the extension of the public comment periods for two rule proposals. First, the CFTC announced that it will extend the comment period from September 17 to November 18 for the proposed alternative compliance framework for derivatives clearing organizations (DCOs) organized outside of the United States that do not pose substantial risk to the US financial system (Alternative Compliance Framework Proposal). Under the Alternative Compliance Framework Proposal, these DCOs would be able to register with the CFTC, yet comply with the core principles applicable to DCOs in the Commodity Exchange Act through their compliance with the regulatory regime of their home country, subject to certain conditions and limitations.

The CFTC also announced that it will be extending the comment period from September 23 to November 22 for a proposed rule to permit exempt DCOs to clear swaps for US customers under certain circumstances (Swap Proposal). The Swap Proposal also would allow persons located outside of the United States to accept funds from US persons to margin swaps cleared at an exempt DCO, without registering as futures commission merchants.

Notice of the extended public comment period for the Alternative Compliance Framework Proposal is available [here](#).

Notice of the extended public comment period for the Swap Proposal is available [here](#).

CFTC and European Commission Issue Joint Statement Following Meeting on Cross-Border Derivatives Regulatory Issues

On September 13, the CFTC and European Commission issued a joint statement reaffirming their mutual commitment to transatlantic cooperation among regulators (Joint Statement). The Joint Statement was released following a September 5 meeting between CFTC Chairman Heath Tarbert and John Berrigan, Deputy Director General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), European Commission.

The Joint Statement explained that during the meeting, delegations from the CFTC, the European Commission and the European Securities Markets Authority (ESMA) discussed a series of topics including, but not limited to, 1) responses to foreign/third-country central counterparties that clear for domestic market participants; 2) possible qualitative and quantitative factors to determine systemic relevance, efficient and effective supervisory cooperation; 3) the need to avoid inconsistent or conflicting requirements; and 4) the importance of home and host regulators and supervisors in supporting local and broader derivatives markets.

The CFTC and the EU delegations agreed to hold follow-up discussions aimed at furthering the development of a practicable transatlantic derivatives regulatory framework.

A copy of the Joint Statement is available [here](#).

CFTC Unanimously Approves Measures Related to Position Limits and Position Accounting for Security Futures Products and Public Rulemaking Procedures

On September 16, the Commodity Futures Trading Commission (CFTC) unanimously approved 1) a final rule on security futures product (SFP) position limits and position accountability for (Final Rule); and 2) a proposed rule on public rulemaking procedures (Proposed Rule).

The Final Rule would, among other changes, amend the position limit rules applicable to SFPs by increasing the default maximum level of equity SFP position limits that designated contract markets may set.

The Proposed Rule would amend part 13 of the CFTC's regulations by eliminating the provisions that set forth the procedures for formulating, amending or repealing rules or regulations. The CFTC believes that it is unnecessary to codify the rulemaking process in a CFTC regulation due to the Administrative Procedure Act governing the CFTC's rulemaking process. Comments on the Proposed Rule must be submitted no later than 30 days following publication of the Proposed Rule in the *Federal Register*.

The text of the Final Rule and the Proposed Rule are available [here](#).

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